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06 UNITED STATES DISTRICT COURT
07 WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

08 ERIC MICHAEL SYDNER,) CASE NO. C08-1148-TSZ
09 Plaintiff,)
10 v.) REPORT AND RECOMMENDATION
11 STEVE THOMPSON, et al.,)
12 Defendants.)
13

14 Plaintiff is currently confined in the Snohomish County Jail in Everett, Washington.
15 Appearing *pro se*, he has filed an application to proceed *in forma pauperis* (“IFP”) together with
16 a proposed civil rights complaint, pursuant to 42 U.S.C. § 1983. (Dkt. No. 1). Plaintiff’s
17 complaint alleges that due to a “scrivener’s error,” he is being held in the Jail past his release date.
18 After screening plaintiff’s proposed complaint pursuant to 28 U.S.C. § 1915A, the Court
19 recommends for the reasons below that plaintiff’s case be dismissed without prejudice.

20 When a prisoner challenges the fact or duration of his confinement, his sole federal remedy
21 is a petition for a writ of habeas corpus, to which the exhaustion requirement applies. *See Preiser*
22 *v. Rodriguez*, 411 U.S. 475, 489-90 (1973); *Young v. Kenny*, 907 F.2d 874, 875 (9th Cir. 1990).

01 Here, plaintiff's sole challenge is to the duration of his confinement. Therefore, he must bring this
02 claim by filing a petition for a writ of habeas corpus.¹

03 A district court should not convert a defective § 1983 claim into a petition for a writ of
04 habeas corpus, but rather should dismiss the claim without prejudice. *See Trimble v. City of Santa*
05 *Rosa*, 49 F. 3d 583, 586 (9th Cir. 1995). Accordingly, the Court recommends that plaintiff's
06 proposed complaint and this action be dismissed without prejudice. Plaintiff's IFP application may
07 be denied as moot. A proposed Order accompanies this Report and Recommendation.

08 DATED this 3rd day of September, 2008.

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11 Mary Alice Theiler
12 United States Magistrate Judge
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21 ¹ The Court notes that plaintiff attaches a grievance form to his complaint in which plaintiff
22 states that he is scheduled to be released from Jail on September 1, 2008. (Dkt. No. 1, Attachment). Therefore, a petition for a writ of habeas corpus might be moot because it would be filed after his release.